IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 3404 of 2004(E)

PETITIONER:

DR.K.A.SYED ALAVI,
ASSISTANT SURGEON,
TALUK HEAD QUARTER HOSPITAL,
PONNANI, MALAPPURAM.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY SECRETARY TO THE GOVERNMENT, HEALTH AND FAMILY WELFARE (A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF HEALTH SERVICES, OFFICE OF THE DIRECTOR OF HEALTH SERVICES, THIRUVANANTHAPURAM.**

3. **THE DISTRICT MEDICAL OFFICER, OFFICE OF THE DISTRICT MEDICAL OFFICER, KOZHIKODE.**

4. **THE SUPERINTENDENT, GENERAL HOSPITAL, KOZHIKODE.**

BY GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON 13/08/2007 THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.3404/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE REPORT OF TRANSFER OF CHARGES DT. 4.2.96.

EXT.P2:- COPY OF THE LETTER DT. 13.12.95 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.

EXT.P3:- COPY OF THE LETTER DT. 19.3.96 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT.P4:- COPY OF THE TELE PRINTER MESSAGE DT. 21.3.96 FROM 1ST RESPONDENT TO THE 3RD RESPONDENT.

EXT.P5:- COPY OF THE ORDER DT. 21.3.96 ISSUED BY THE 1ST RESPONDENT.

EXT.P6:- COPY OF THE CHARGE MEMO DT. 21.10.97, FORWARDED TO THE PETITIONER AS PER ENDORSEMENT DT. 22.11.97 IOF THE 4TH RESPONDENT.

EXT.P7:- COPY OF THE OBJECTIONS DT. 22.12.97 , SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE FAX MESSAGE TO THE MINISTER OF HEALTH BY THE 3RD RESPONDENT, DT. 18.3.96.

EXT.P9:- COPY OF THE LETTER DT. 20.3.96 FROM THE I.G. OF POLICE , VIGILANCE TO THE COMMISSIONER AND SECRETARY, VIGI DEPARTMENT.

EXT.P10:- COPY OF THE ORDER DT. 2.11.2000 ISSUED BY THE UNDER SECRETARY OF THE 1ST RESPONDENT.

EXT.P11:- COPY OF THE SHOW CAUSE NOTICE DT. 9.10.01 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P12:- COPY OF THE REPLY DT. 22.11.01 FROM THE PETITIONER TO THE 2ND RESPONDENT.
EXT.P13:- COPY OF THE ORDER DT. 8.1.02 ISSUED BY THE 2ND RESPONDENT.

EXT.P14:- COPY OF THE MEMORANDUM OF APPEAL DT. 28.6.02 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT .

EXT.P15:- COPY OF THE ORDER DT. 27.9.03, ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.3404 OF 2004

Dated this the 13th day of August, 2007

JUDGMENT

The petitioner, then an Assistant Surgeon, was placed under suspension pending enquiry into alleged misconduct. Ext.P6 was issued to him requiring him to show cause against disciplinary action on the allegations contained therein. The charge was that the application submitted by him for leave from 11.9.1995 to 30.11.1995 on medical certificate was returned on 13.12.1995 with direction to obtain and forward revised leave application, however, that the petitioner did not submit revised leave application, but enjoyed 81 days' eligible leave and re-joined on 1.12.1995 and still further, that he entered on Earned Leave for 83 days with effect from 4.2.1996 and that a confidential check up in the matter was conducted through the Superintendent of Police (Vigilance) and it was found that the petitioner entered on Earned Leave, which was not sanctioned, and he was unauthorisedly absent from service and was engaged in private practice in Hajath Hospital, Ponnani.

2. In Ext.P7, the petitioner replied to the charges. He stated that the allegation that he is doing private practice in Hajath Hospital, Ponnani is not true.

3. By Ext.P9 dated 20.3.1996 the Inspector General of Police (Vigilance) informed the Government through the Commissioner and Secretary in the Vigilance Department, in answer to the Government letter dated 19.3.1996, that the confidential check up conducted in the matter through Sri.K.Balakrishnan Nair, Superintendent of Police, Vigilance, Kozhikode had disclosed, among other things, that the petitioner is doing private practice in Hajath Hospital, Ponnani as informed by Sri.Balakrishnan Nair over phone.

4. The suspension of the petitioner was revoked and thereafter, disciplinary proceedings were ordered to be conducted. On the basis of the direction of the Government contained in the letter dated 30.7.2001, the Director of Health

Services proceeded with the disciplinary action by issuance of Ext.P11 show cause notice.

5. I may at once notice that as rightly contended by the learned counsel for the petitioner, though Ext.P11 show cause notice is issued calling upon the delinquent to show cause why the proposed decision to award him the punishment of barring of next two increments with cumulative effect should not be implemented, it does not contain that it was concluded in the enquiry that the petitioner was guilty of the charges. Equally, the DHS also did not deal with the stand of the petitioner that he is innocent while Ext.P13 was issued, confirming the provisional decision regarding punishment. In fact, even in Ext.P13, there is no definite finding as to the guilt.

6. While there is no malice or malafides is attributed to Sri.K.Balakrishnan Nair, the Superintendent of Police, Vigilance, Kozhikode or to the Inspector General of Police to hold that the opinion gathered by them in the confidential check up is wrong

or unreliable, punishment was imposed by the disciplinary authority without entering a finding as to the guilt.

7. Imposing the punishment of barring of two increments with cumulative effect has to be treated only as a minor punishment as at that point of time and Ext.P14 appeal of the petitioner was considered by the Government. In considering that appeal, the Government granted the petitioner an opportunity of personal hearing. The entire records were examined and the contentions raised by the petitioner, including on the issue as to how the period of suspension has to be treated, as also the question of subsistence allowance, were dealt with quite elaborately by the Government in the appeal. Advertence to paragraphs 6 and 7 of Ext.P15 order would show that all the contentions of the petitioner, on the merits, in opposition to the allegations against him, have been duly adverted to and considered, including by putting pointed queries to him during the course of personal hearing. It has been found by the Government that the charges are substantiated. The Government also took the view that barring of increments with cumulative effect was re-categorised

as major penalty only after the relevant time and that therefore, the petitioner's contention regarding absence of enquiry in terms of Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 is not sustainable.

8. Having regard to the nature of consideration of the materials and contentions by the Government as the appellate authority, as is reflected in the appellate order, Ext.P15, particularly paragraphs 6 and 7 thereof, the impugned action cannot be termed as violative of law, in any manner, and the impugned order Ext.P15, in which, all the earlier proceedings have merged, is not bad on counts of any jurisdictional error or legal infirmity.

In the result, the writ petition fails and is accordingly dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.